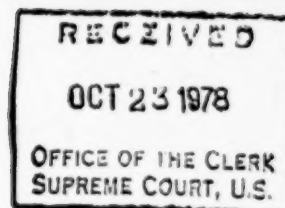


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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

CHIEF HARRY PARKER,

Petitioner,

Vs.

No. 78-99

JAMES RANDOLPH, WILBURN LEE PICKENS,
AND ISAIH HAMILTON,

Respondents.

MOTION OF ISAIH HAMILTON FOR PERMISSION
TO PROCEED IN FORMA PAUPERIS

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED
STATES:

Comes now the Respondent, Isaih Hamilton, by and through
his attorney of record, Alan Bryant Chambers, and moves this
Court for permission to allow him to proceed in forma pauperis,
and in support thereof would show unto the Court as follows:

(1) That he has been incarcerated in the Shelby County
Jail and in the Tennessee State Penitentiary; that he has no
money or funds whatsoever with which to finance an appeal.

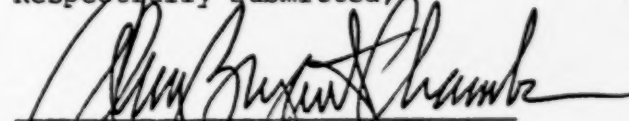
(2) That Respondent Hamilton has been unable to pay his attorney any fee whatsoever for the appeal to the United States Supreme Court; but that counsel has taken this case pro bono publico.

(3) That Respondent Hamilton perfected his appeal to the Sixth Circuit Court of Appeals in forma pauperis.

(4) That Respondent Hamilton has meritorious issues to be resolved upon appeal; and that he is suffering greatly from imprisonment contrary to law.


WHEREFORE, Petitioner Hamilton prays for permission of the Court to proceed in forma pauperis.

Respectfully Submitted,


ALAN BRYANT CHAMBERS
Attorney for Isaih Hamilton
Suite 1000, 147 Jefferson Avenue
Memphis, Tennessee 38103
(901) 525-1732

CERTIFICATE OF SERVICE ON COUNSEL

I, Alan Bryant Chambers, do hereby certify that I have sent two copies of this Motion of Isaih Hamilton for Permission to Proceed in Forma Pauperis to Mr. Michael E. Terry, Assistant Attorney General, State of Tennessee and to Mr. Walter L. Evans, Attorney for Randolph and Pickens, on this the 11 day of October, 1978.



ALAN BRYANT CHAMBERS

OATH

I, Alan Bryant Chambers, Counsel for Isaih Hamilton, hereby certify that I have read the foregoing Motion and swear that its contents are true to the best of my knowledge, information, and belief.

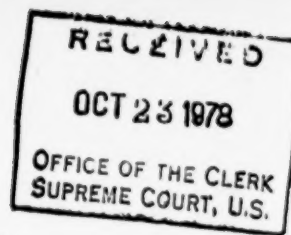

ALAN BRYANT CHAMBERS

Sworn to and Subscribed before me on this the 11 day of October, 1978.


NOTARY PUBLIC

My Commission Expires:

My Commission Expires July 27, 1981



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

CHIEF HARRY PARKER,
Petitioner,

Vs.

No. 78-99

JAMES RANDOLPH, WILBURN LEE PICKENS,
AND ISAIH HAMILTON,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
SUBMITTED IN FORMA PAUPERIS
ON BEHALF OF RESPONDENT ISAIH HAMILTON

Respectfully Submitted,

Alan Bryant Chambers,
Attorney for Isaih Hamilton
147 Jefferson Avenue
Memphis, Tennessee 38103
(901) 525-1732

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TABLE OF AUTHORITIES

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BRIEF AND OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

I
OPINION AND ORDERS BELOW

The opinions and orders below are accurately set forth in the appendix to Petition for Writ of Certiorari, and Respondent adopts them and will make reference thereto.

II
JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

III
QUESTIONS PRESENTED

(1) Whether the United States Court of Appeals for the Sixth Circuit has correctly interpreted the law as stated by this Court in Bruton v. United States, 391 U.S. 123, (1968); Schneble v. Florida, 405 U.S. 427, (1972); and Harrington v. California, 395 U.S. 250 (1969).

(2) Whether the Court of Appeals was correct in affirming the factual determination of the District Court that the respondent Wilbur Pickens was denied his constitutional right to

counsel as enunciated by this Court in Miranda v. Arizona, 384 U.S. 436 (1966), when his confession was taken after he had asked for his lawyer to be present.

IV
STATEMENT OF THE CASE

For statement of the case and introduction Respondent Hamilton would rely upon the submission by the State of Tennessee; and would show that the history of this law suit accurately appears on pages seven and eight of the Petition for Certiorari.

V
STATEMENT OF THE FACTS

Five men were arrested in this cause and charged with the offense of murder in the perpetration of a felony. Two of the men were white, Robert Wood and Joe Wood, brothers. Three of the men were black, Isaih Hamilton, James Randolph, and Wilburn Pickens. The trial was conducted in the Criminal Court of Shelby County, Tennessee.

At trial Defendant Robert Wood took the stand and admitted that he shot a gambler who he thought was cheating him; he also admitted that he thereafter took the money. State witness Tommy Thompson corroborated this version of the facts. Defendant Robert Wood did not testify that Isaih Hamilton, respondent herein, came to the game location as part of a pre-arranged plan.

The rest of the proof came by admission into evidence of statements of respondents Hamilton, Pickens, and Randolph. All three of these men challenged the admissibility of the statement. Respondent Hamilton challenged the statement and asserted that it was inaccurate and did not contain substantially what he told the police.

Respondents Hamilton, Randolph and Pickens did not testify. The statements attributed to them incriminated one another. Therefore, they did not have an opportunity to confront and cross-examine one another on the content of the statements.

VI BRIEF AND ARGUMENT

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
HAS CORRECTLY INTERPRETED THE LAW AS STATED BY THIS COURT
IN BRUTON V. UNITED STATES, SCHNEBLE V. FLORIDA, AND
HARRINGTON V. CALIFORNIA

Respondent Hamilton submits that this is a classic Bruton case. Five men are charged as Co-Defendants. Statements are attributed to four of the men, and admitted into evidence. Each statement inculcates the others. An attempt was made at redaction, but the statements were transparent as to who was referred to. The statements are admitted into evidence through the testimony of an investigating police officer. However, none of the four men take the stand to testify. Therefore, not one of the four can cross-examine or confront the Co-Defendants who made statements against them.

Respondent Hamilton has patiently considered the propositions of law urged by the State of Tennessee both before the District Court and the Sixth Circuit Court, and respectfully submits that they are totally without merit. The State of Tennessee would have this Court believe that Bruton does not apply where several Defendants give interlocking statements; but this notion is not supported by any language in Bruton.

The essence of Bruton is to enforce the Defendants Sixth Amendment Right to confrontation and cross-examination. In the case of Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620 (1968), the Supreme Court stated as follows:

"Before discussing this, we must pause to observe that in Pointer v. State of Texas, 380 U.S. 400, 85 S. Ct. 1065, 13 L. Ed. 2d 923, we confirmed "that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him" secured by the Sixth Amendment, id., at 404, 85 S. Ct. at 1068; "a major reason underlying the constitutional confrontation rule is to cross-examine the witnesses against him." Id., at 406-407, 85 S. Ct. at 1069."
(88 S. Ct. 1623)

In Bruton the Supreme Court detailed the factual basis of the Constitutional deprivation so that the application of the legal principles to a fact situation would be clear:

"Here Evans' oral confessions were in fact testified to, and were therefore actually in evidence. The testimony was legitimate evidence against Evans, and to that extent was properly before the jury during its

deliberations. Even greater, then, was the likelihood that the Jury would believe Evans made the statements and that they were true--not just the self-incriminating portions, but those implicating Petitioner as well. Plainly, the introduction of Evans' confession added substantial, perhaps even critical, weight to the government's case in a form not subject to cross-examination, since Evans did not take the stand. Petitioner thus was denied his constitutional right of confrontation."
(88 S. Ct. 1620)

Respondent Hamilton would show that in this case the statements of Randolph and Pickens occupy the same logical Petition when used against him, as did Evans' statement in Bruton. Hamilton had no opportunity whatsoever to cross-examine Randolph or Pickens, because they did not testify. Therefore, the jury considered their statements, with transparent redactions, against him.

In its Petition for Certiorari the State of Tennessee places heavy reliance upon Harrington v. California, 395 U.S. 296 (1969). Harrington does not overrule Bruton. The Court made a finding of fact predicated upon the entire record in the Harrington case that no prejudicial error occurred. The Court should not make such a finding in this case because the State of Tennessee did not set out a complete factual situation upon which to base harmless error. Whereas, the District Court, with the Sixth Circuit Court affirming, found there was prejudicial error.

Prejudicial error was defined by this Court in the case of Chapman v. California, 386 U.S. 18, 87 S.Ct. 824 (1967), with the following language:

....Before a federal Constitutional error can be held harmless, the Court must be able to declare a belief that it was harmless beyond a reasonable doubt."
(386 U.S. 18)

It is preposterous to believe that the introduction and admissability of the statements was harmless beyond a reasonable doubt. If the confessions did not help the State of Tennessee in making out its case, it would not have introduced them in the first place. The jury must have been greatly persuaded by the statements. Since the jury were so persuaded by Bruton violation statements, then Mr. Hamilton was in fact prejudiced, and was denied a fair trial.

VII BRIEF AND ARGUMENT

THE COURT OF APPEALS WAS CORRECT IN AFFIRMING THE FACTUAL DETERMINATION OF THE DISTRICT COURT THAT THE RESPONDENT WILBURN PICKENS WAS DENIED HIS CONSTITUTIONAL RIGHT TO COUNSEL

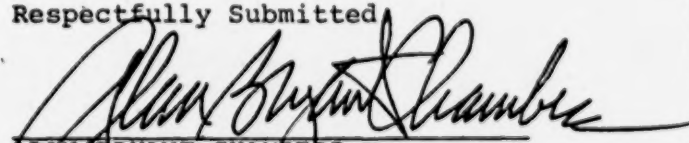
Respondent Hamilton asserts that he was aggrieved and denied a fair trial by the admission of Pickens' statement because the statement was coerced. Respondent Hamilton submits that his case would have been relatively stronger had he not been burdened with the Pickens' statement. This statement and other error assigned in the primary appeal of his case

had an aggregate effect of denying him a fair trial. This argument more specifically refers to Wilburn Pickens; and Respondent Hamilton adopts the arguments set out by him in his response to the Petition for Certiorari.

VIII
CONCLUSION

Wherefore, for the reasons heretofore assigned, Respondent Hamilton submits that clear Bruton violations occurred when the statements of Randolph and Pickens were admitted into evidence against him. The admission of these statements was prejudicial error under Chapman v. California. The conclusion is that Respondent Hamilton's state trial was conducted contrary to the Sixth Amendment to the United States Constitution. Therefore, this Court should affirm the Sixth Circuit Court of Appeals decision that the State of Tennessee should be ordered to grant Hamilton a new trial or release him.

Respectfully Submitted,


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